

AGENDA
FREMONT REDEVELOPMENT AGENCY REGULAR MEETING
MAY 25, 2010
7:00 P.M.

1. CALL TO ORDER

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the Redevelopment Agency and will be enacted by one motion and one vote. There will be no separate discussion of these items unless an Agency Member or citizen so requests, in which event the item will be removed from the Consent Calendar and considered in its normal sequence on the agenda. Additionally, other items without a "Request to Address the Redevelopment Agency Board" card in opposition may be added to the consent calendar. (In the report section of the agenda, consent items are indicated by an asterisk.)

2.1 Approval of Minutes – None.

2.2 EDEN-PERALTA SENIOR HOUSING LOAN AMENDMENT

Consideration of Amendment to Loan made to Eden Housing for Peralta Senior Housing Development

Contact Person:

Name:	<i>Bill Cooper</i>	<i>Elisa Tierney</i>
Title:	<i>Housing Project Manager</i>	<i>Redevelopment Agency Director</i>
Dept.:	<i>Office of Housing & Redevelopment</i>	<i>Office of Housing & Redevelopment</i>
Phone:	<i>510-494-4520</i>	<i>510-494-4501</i>
E-Mail:	<i>bcooper@fremont.gov</i>	<i>etierney@fremont.gov</i>

RECOMMENDATIONS: *Staff recommends that the Agency Board adopt a Resolution to:*

- 1. Amend the Loan Agreement executed by the Redevelopment Agency and Peralta Seniors, L.P. to reduce the interest rate from 3% to zero percent for Eden Housing Peralta Senior Housing project; and*
- 2. Authorize the Executive Director or designee to execute the documents as required and as prepared by Agency Special Counsel and approved by Agency General Counsel, and take such other actions as are appropriate to amend the loan documents as approved by Agency Special Counsel and General Counsel.*

2.3 SUBORDINATION OF MAIN STREET VILLAGE REGULATORY AGREEMENT

Authorize the Executive Director or Designee to Execute an Agreement to Subordinate the Agency Regulatory Agreement to Bank Loan Documents for Main Street Village

Contact Person:

<i>Name:</i>	<i>Bill Cooper</i>	<i>Elisa Tierney</i>
<i>Title:</i>	<i>Housing Project Manager</i>	<i>Redevelopment Agency Director</i>
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RECOMMENDATION: Staff recommends that the Agency Board adopt a resolution authorizing the Executive Director or designee to enter into a subordination agreement subordinating the Agency Regulatory Agreement to the bank loan documents and to take such other actions and execute such other documents as are appropriate to effectuate the intent of the subordination approved for Main Street Village.

2.4 SUBORDINATION OF EDEN-PERALTA SENIOR HOUSING REGULATORY AGREEMENT

Authorize the Executive Director or Designee to Execute an Agreement to Subordinate the Agency Regulatory Agreement to Bank Loan Documents for Peralta Senior Housing

Contact Person:

<i>Name:</i>	<i>Bill Cooper</i>	<i>Elisa Tierney</i>
<i>Title:</i>	<i>Housing Project Manager</i>	<i>Redevelopment Agency Director</i>
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RECOMMENDATION: Staff recommends that the Agency Board adopt a resolution authorizing the Executive Director or designee to enter into a subordination agreement subordinating the Agency Regulatory Agreement to the bank loan documents and to take such other actions and execute such other documents as are appropriate to effectuate the intent of the subordination approved for Peralta Senior Housing.

3. PUBLIC COMMUNICATIONS

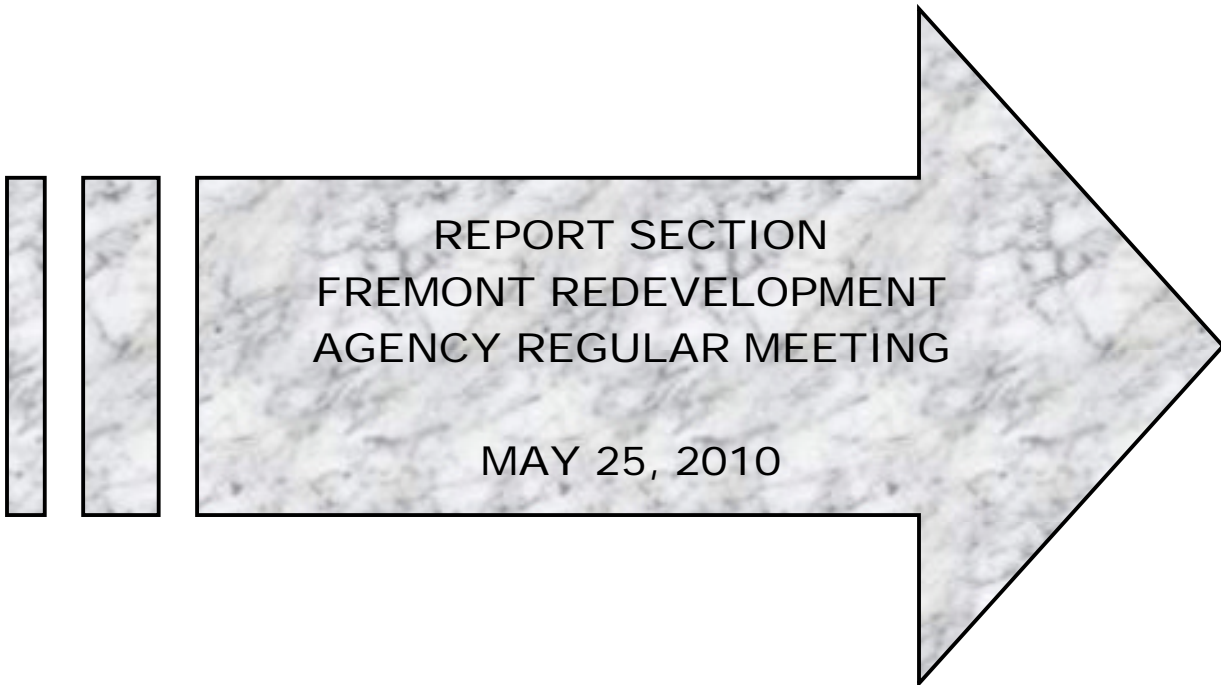
3.1 Oral and Written Communications

4. PUBLIC HEARINGS – None.

5. OTHER BUSINESS

5.1 Report Out from Closed Session of Any Final Action

6. ADJOURNMENT



***2.2 EDEN-PERALTA SENIOR HOUSING LOAN AMENDMENT**

Consideration of Amendment to Loan made to Eden Housing for Peralta Senior Housing Development

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Executive Summary: In January 2009, the Agency Board approved a \$12,720,621 development loan for Eden Housing to develop Peralta Senior Housing, a 98-unit rental housing development with ancillary services planned for Peralta Boulevard in Centerville. Eden has requested that the Agency loan be amended to reduce the interest rate from 3% simple-interest to zero percent. The amendment is necessary to address an issue related to the financing of the development with Low Income Housing Tax Credits. Staff recommends that the Agency loan agreement be amended as requested by Eden to allow the project to move forward.

BACKGROUND: On January 13, 2009, the Agency Board approved a development loan for Eden Housing's Peralta Senior Housing, committing \$12,720,621 to the 98-unit rental housing development Eden intends to build at 3701 Peralta Boulevard in Centerville. The 100% affordable (89-extremely low, 8-very low and 1-manager unit), mixed-use development will include office space for On Lok, a senior day/health care provider, and space for a satellite office for Fremont Human Services' Senior Support Services division. The City has approved the project and is prepared to issue building permits. Eden has cleared the project site and prepared it for construction, which is scheduled to start at the end of June. The project is expected to be completed in fall 2011.

DISCUSSION/ANALYSIS: The cost of the residential portion of Peralta Senior Housing is projected to be \$37.9 million. The majority of project financing is provided by the Agency loan (\$12.7 million), a HUD Section 202 Capital Advance (\$13.4 million), and Tax Credit equity (\$8.7 million). The remaining \$3.1 million of financing is provided by an Alameda County Mental Health Services Act (MHSA) loan and a Solar Credit grant.

The \$12.7 million Agency loan has a 55-year term, 3% simple-interest rate with payments being made to the Agency only after the HUD 40-year compliance period, and only if the project has surplus cash. Eden has requested that the Agency reduce the interest rate on the Agency loan from 3% simple interest to zero percent. Eden is also making a similar request of Alameda County for its MHSA loan. Eden is requesting this change because of an issue related to the project's Low Income Housing Tax Credits (LIHTC or tax credits) financing, as explained below.

Eden is expected to receive approximately \$8.7 million for the project from the sale to a limited partnership investor of the right to take LIHTC and other tax deductions. The Agency has been notified under the current projections, the partnership is not willing to invest in the project. With the current interest expense, the project is not sufficiently profitable for the partnership's investors to fully use the

tax credits. Unfortunately for this plan, the LP's current profit projections show losses during this 11-year period that will exceed all prior profits (resulting at time in a "negative capital account balance" for the LP – its liabilities will exceed its assets). This condition means that the individual partner's share of the capital account will also at times be negative. If the LP partners will not be able to fully use the tax benefits they will not pay the amount required (\$8.7 million) for the Peralta Senior Housing project to work.

By eliminating the City's interest expense, the project becomes sufficiently profitable over the 11-year period to allow for the investors to realize the full benefit of the purchase of the tax credits.

This issue is even more pronounced in this project due to the HUD 202 Project Rental Assistance Contract (PRAC). The subsidy from HUD PRAC contracts are designed to maintain breakeven cash flow, which leads to greater losses than developments with better cash flows. Anticipating the need to reduce tax losses generated by the project to maintain a positive capital account, Eden has taken steps within its control, such as electing the longest depreciation periods allowed, but this has not been sufficient to solve the problem. In order to further reduce tax losses, Eden has concluded that it needs to reduce the amount of interest on the deferred Agency and Alameda County loans.

To corroborate the developers need for a reduced interest rate on the Agency loan, staff and its outside financial advisor reviewed the project financials, including capital account balance projections. Following this analysis and after meeting with the developer and the developer's financial consultant, staff has concluded that the interest rate reduction is necessary to prevent the capital accounts from going negative during the tax credit period. The Agency's financial advisor also noted that this situation is not unique to Peralta Senior Housing. In the past few years, project sponsors of many other tax credit development deals have had to make similar requests for interest rate reductions on public entity loans to address negative capital accounts. Based on the preceding, staff recommends that the Agency Board approve Eden's request to reduce the interest rate on the Agency loan from 3% simple interest to zero percent to address the capital account issue and to allow the project to move forward.

FISCAL IMPACT: While it is hard to quantify the fiscal impact, staff has made estimates based on the loss in interest earnings. Specifically, staff compared the present value of the Agency loan, with and without interest, assuming that no payments would be made during the 55-year term. The current long-term U.S. Treasury rate of 4.4% was used to discount the future payments. At zero percent interest, at the end of the 55-year term, the Agency would receive \$12,720,621 in future dollars, valued at \$1,191,190 in today's dollars. At 3% simple-interest, the Agency would receive \$33,709,646 in future dollars, valued at \$3,156,652 in today's dollars. By foregoing the interest, the fiscal impact to the Agency will be a loss of \$1,965,462.

Unrelated to the action requested in this staff report, Eden recently notified staff that the project would likely come under budget by approximately \$1.5 million and that this cost savings will be returned to the Agency as a reduction to the Agency's loan commitment. This cost saving is due to a decrease in construction costs that have occurred over the past two years as a result of the economic downturn.

Should this anticipated loan reduction be realized, nearly three quarters of the lost interest revenue (in today's dollars) resulting from the requested modification would be offset. In other words, the net impact to the Agency would be less than \$500,000.

ENVIRONMENTAL REVIEW: The current request for a change to the loan term does not trigger provisions of CEQA (California Environmental Quality Act) or NEPA (National Environmental Policy Act). The project is not subject to CEQA per Public Resources Code Section 21159.23 for affordable housing in-fill projects. In 2009, NEPA review was completed for Peralta Senior Housing and it was determined that the project will have no significant impact on the environment.

ENCLOSURE: [Draft resolution](#)

RECOMMENDATIONS: Staff recommends that the Agency Board adopt a Resolution to:

1. Amend the Loan Agreement executed by the Redevelopment Agency and Peralta Seniors, L.P. to reduce the interest rate from 3% to zero percent for Eden Housing Peralta Senior Housing project; and
2. Authorize the Executive Director or designee to execute the documents as required and as prepared by Agency Special Counsel and approved by Agency General Counsel, and take such other actions as are appropriate to amend the loan documents as approved by Agency Special Counsel and General Counsel.

***2.3 SUBORDINATION OF MAIN STREET VILLAGE REGULATORY AGREEMENT**
Authorize the Executive Director or Designee to Execute an Agreement to Subordinate the Agency Regulatory Agreement to Bank Loan Documents for Main Street Village

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Executive Summary: Staff is requesting that the Agency Board adopt a resolution authorizing the Executive Director or designee to execute a subordination agreement subordinating the Agency's Regulatory Agreement to bank loan documents. The subordination is necessary for the developer to secure construction financing from Wells Fargo Bank for Main Street Village.

BACKGROUND: Fremont Main Street Village, LP (Allied Housing and Mid-Peninsula Housing Coalition, developer) has received the required entitlements and approvals to construct a 64-unit affordable supportive housing rental development at the corner of 3615 Main Street and 41037 High Street in the Irvington Redevelopment Area. The City is prepared to issue building permits and construction is scheduled to start at the end of June. Construction is expected to be completed in fall 2011. The City and Redevelopment Agency have approved a \$6.6 million affordable housing loan for the project.

DISCUSSION/ANALYSIS: In addition to other loan documents, the Agency loan is evidenced by an Agency Regulatory Agreement and Declaration of Restrictive Covenants imposing a rent affordability restriction on the development. The construction of Main Street Village will be financed by a commercial bank loan which will be evidenced by certain loan documents including a loan agreement and promissory note secured by a deed of trust. Wells Fargo Bank, the lender, requires subordination of the Agency Regulatory Agreement to its financing as a condition of providing the bank loan. Prior to subordination of the Agency Regulatory Agreement, California Redevelopment Law requires the Agency to make a finding that an economically feasible alternative method of financing the construction of the development, on substantially comparable terms and conditions to the bank loan, is not reasonably available without subordination of the Agency Regulatory Agreement.

The developer has stated to staff that without the Agency's subordination, they would not be able to secure construction financing. To confirm that construction lenders require local agencies to subordinate to their financing, staff consulted with the Agency's financial advisor who contacted several commercial construction lenders and concluded that they generally would require subordination of redevelopment agency regulatory agreements as a condition of providing financing to a project.

Based on the experience of Agency staff and consultants, no other lender would be willing to provide construction financing on terms in which the Regulatory Agreement would not be subordinate to the security for such financing, since no lender would be prepared to foreclose upon its security and take possession of the property subject to the Regulatory Agreement and the potentially adverse economic

effect that operating the project subject to the affordability restrictions of the Regulatory Agreement would have on the value of the property. Therefore, an economically feasible alternative method of financing the construction of the development on substantially comparable terms and conditions, but without subordination of the Regulatory Agreement, is not reasonably available. Pursuant to its Subordination Agreement, Wells Fargo Bank has made written commitments to the Agency reasonably designed to protect the Agency's investment in the event of default under the bank loan, including providing the Agency with notice of default under the bank financing and the opportunity to cure such defaults.

FISCAL IMPACT: N/A

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: [Draft Resolution](#)

RECOMMENDATION: Staff recommends that the Agency Board adopt a resolution authorizing the Executive Director or designee to enter into a subordination agreement subordinating the Agency Regulatory Agreement to the bank loan documents and to take such other actions and execute such other documents as are appropriate to effectuate the intent of the subordination approved for Main Street Village.

***2.4 SUBORDINATION OF EDEN-PERALTA SENIOR HOUSING REGULATORY AGREEMENT**

Authorize the Executive Director or Designee to Execute an Agreement to Subordinate the Agency Regulatory Agreement to Bank Loan Documents for Peralta Senior Housing

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Executive Summary: Staff is requesting that the Agency Board adopt a resolution authorizing the Executive Director or designee to execute a subordination agreement subordinating the Agency's Regulatory Agreement to bank loan documents. The subordination is necessary for the developer to secure construction financing from Union Bank for Eden-Peralta Senior Housing.

BACKGROUND: Eden Housing (Peralta Seniors L.P.) intends to build a 98-unit rental housing development at 3701 Peralta Boulevard in Centerville. The 100% affordable, mixed-use development will include office space for On Lok, a senior day/health care provider, and space for a satellite office for Fremont Human Services' Senior Support Services division. The City has approved the project and is prepared to issue building permits. Construction is scheduled to start at the end of June and the project is expected to be completed in fall 2011. The Agency and the City have approved a \$12.7 million development loan for the project.

DISCUSSION/ANALYSIS: In addition to other loan documents, the Agency loan is evidenced by an Agency Regulatory Agreement and Declaration of Restrictive Covenants imposing a rent affordability restriction on the development. The construction of Peralta Senior Housing will be financed by a commercial bank loan which will be evidenced by certain loan documents including a loan agreement and promissory note secured by a deed of trust. Union Bank, the lender, requires subordination of the Agency Regulatory Agreement to its financing as a condition of providing the bank loan. Prior to subordination of the Agency Regulatory Agreement, California Redevelopment Law requires the Agency to make a finding that an economically feasible alternative method of financing the construction of the development, on substantially comparable terms and conditions to the bank loan, is not reasonably available without subordination of the Agency Regulatory Agreement.

The developer has stated to staff that without the Agency's subordination, they would not be able to secure construction financing. To confirm that construction lenders require local agencies to subordinate to their financing, staff consulted with the Agency's financial advisor who contacted several commercial construction lenders and concluded that they generally would require subordination of redevelopment agency regulatory agreements as a condition of providing financing to a project.

Based on the experience of Agency staff and consultants, no other lender would be willing to provide construction financing on terms in which the Regulatory Agreement would not be subordinate to the security for such financing, since no lender would be prepared to foreclose upon its security and take

possession of the property subject to the Regulatory Agreement and the potentially adverse economic effect that operating the project subject to the affordability restrictions of the Regulatory Agreement would have on the value of the property. Therefore, an economically feasible alternative method of financing the construction of the development on substantially comparable terms and conditions, but without subordination of the Regulatory Agreement, is not reasonably available. Pursuant to its Subordination Agreement, Union Bank has made written commitments to the Agency reasonably designed to protect the Agency's investment in the event of default under the bank loan, including providing the Agency with notice of default under the bank financing and the opportunity to cure such defaults.

FISCAL IMPACT: N/A

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: [Draft Resolution](#)

RECOMMENDATION: Staff recommends that the Agency Board adopt a resolution authorizing the Executive Director or designee to enter into a subordination agreement subordinating the Agency Regulatory Agreement to the bank loan documents and to take such other actions and execute such other documents as are appropriate to effectuate the intent of the subordination approved for Peralta Senior Housing.

5.1 Report Out from Closed Session of Any Final Action